

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

NANCY HAMRICK, as executor of the
estate of HOKE BROCK HAMRICK,

Petitioners,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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No. 99-683V

Special Master Christian J. Moran

Filed: October 6, 2006

Denial of compensation; judgment
on the record; Hepatitis B.

Clifford J. Shoemaker, Shoemaker and Associates, Vienna, Virginia for petitioner
Vincent J. Matanowski, United States Dep't of Justice, Washington, D.C. for respondent

UNPUBLISHED DECISION¹

On August 6, 1999, Mr. Hoke Brock Hamrick filed a petition seeking compensation under the National Vaccine Injury Compensation Program (“the Program”). 42 U.S.C. §§ 300aa-1 et seq. Mr. Hamrick alleged that the hepatitis B vaccine, which he received on February 25, 1991, caused him to suffer an “adverse reaction.” Petition (“Pet.”) at ¶ 3.

On August 28, 2006, the petitioner filed a Motion for a Ruling on the Record.² This motion is GRANTED. The Court finds that the information on the record does not show entitlement to an award under the Program. Petitioner’s claim for compensation is hereby DENIED.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, petitioner has 14 days to identify and to move to delete such information before the document’s disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

² As discussed below, this motion was filed when a motion to change the caption was pending.

Mr. Hamrick was born on October 4, 1943. Exhibit 1 at 1. The sparse record that exists in this case provides no direct information about his medical treatment until he received the hepatitis B vaccine on February 25, 1991. See id. Although the text is faint, it appears that Mr. Hamrick received this vaccination in Polk County, Georgia. Id.

Mr. Hamrick's petition did not identify a disease or syndrome allegedly caused by the hepatitis B vaccine. In 1991, Mr. Hamrick reported that he had a history of hypertension. Exhibit 1 at 5. In March and April 1991, Mr. Hamrick was being treated for deep vein thrombosis and pulmonary embolus. Exhibit 1 at 2, at 5.

Between October 1995 and November 1999, Mr. Hamrick was seen regularly by a physician. Exhibit 1 at 10-19. However, the handwriting is difficult to understand and Mr. Hamrick presented no evidence to explain his condition. Whether Mr. Hamrick received additional medical care after November 1999 is not clear. This is the date the records end.

As mentioned, Mr. Hamrick filed a petition in August 1999. Mr. Hamrick filed a collection of medical records as exhibit 1 on June 13, 2006.

On August 11, 2006, Mr. Hamrick's attorney filed a status report stating that Mr. Hamrick had died. (The status report did not explain when Mr. Hamrick had died.) The status report also stated that Mr. Hamrick's wife, who was the executor of his estate, intended not to pursue this action. On that same date, Mrs. Hamrick, as the executor of Mr. Hamrick's estate, filed a motion to change the caption to designate that she was the petitioner. After allowing time for respondent to file an objection, this motion was granted on September 18, 2006.

On August 28, 2006, the petitioner filed a motion for judgment on the record. Petitioner recognized that she could not prevail because she "cannot find an expert to support causation in [this] case." On September 14, 2006, respondent filed its response to the motion for judgment.

To receive compensation under the Program, Mrs. Hamrick must prove either: (1) that Mr. Hamrick suffered a "Table Injury"--*i.e.*, an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or (2) that he suffered an injury that was actually caused by a vaccine. See 42 U.S.C. §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1); Capizzano v. Sec'y of Health and Human Servs., 440 F.3d 1317, 1320 (Fed. Cir. 2006). Here, Mrs. Hamrick does not claim that Mr. Hamrick suffered a table injury. Thus, she must prove causation in fact.

A petitioner may not be given a Program award based solely on the petitioner's claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. 42 U.S.C. § 300aa-13(a)(1). In determining whether a petitioner is entitled to compensation, the special master shall consider all material contained in the record. 42 U.S.C. § 300aa-13(b)(1). This universe necessarily includes "any . . . conclusion, [or] medical judgment . . . which is contained in the record regarding . . . causation . . . of the petitioner's illness."

42 U.S.C. § 300aa-13(b)(1)(A). Here, because the medical records do not seem to support Mrs. Hamrick's claim, a medical opinion must be offered in support. Mrs. Hamrick, however, has offered no such opinion.

The records are sufficiently developed that a decision made be made as to whether Mrs. Hamrick is entitled to a Program award. See 42 U.S. C. § 300aa-12(d)(3)(B)(v); Vaccine Rule 8(b).

To prove causation in fact, a petitioner must establish at least three elements. The petitioner's

burden is to show by preponderant evidence that the vaccination brought about [the] injury by providing: (1) a medical theory causally connecting the vaccination and the injury; (2) a logical sequence of cause and effect showing that the vaccination was the reason for the injury; and (3) a showing of a proximate temporal relationship between vaccination and injury.

Althen v. Sec'y of Health and Human Servs., 418 F.3d 1274, 1278 (Fed. Cir. 2005). Proof of medical certainty is not required; a preponderance of the evidence suffices. Bunting v. Sec'y of Health and Human Servs., 931 F.2d 867, 873 (Fed. Cir. 1991).

The records do not support a judgment in favor of Mrs. Hamrick because she has failed to establish any of the three prongs required by Althen. The medical records do not indicate that Mr. Hamrick suffered an injury, let alone an injury caused by the hepatitis B vaccination. Mrs. Hamrick fails to identify any records that mention the hepatitis B vaccination and a review of the record has revealed none.

For this reason, petitioner's claim for compensation is hereby DENIED. In the absence of a motion for review, the Clerk of the Court shall enter judgment dismissing the petition.

IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master